

**STANDARD OPERATING PROCEDURE
OFFICE OF ENVIRONMENTAL INFORMATION**

**OEI Procedure for Responding to
Freedom of Information Act Requests**

I. PURPOSE:

To provide basic instructions for responding to Freedom of Information Act (FOIA) requests submitted to the Office of Environmental Information (OEI).

To ensure OEI responds to FOIA requests in accordance with statutory requirements, the EPA's implementing regulations, and open government and transparency policies.

II. BACKGROUND/SCOPE:

The FOIA, 5 U.S.C. § 552, enacted in 1966, gives any requester the right to obtain access to federal agency records unless such records or portions of such records are protected from public disclosure by one or more of the nine exemptions or three law enforcement exclusions contained in the statute. The nine exemptions for FOIA are:

- 1) Classified national defense and foreign relations information.
- 2) Internal agency rules and practices.
- 3) Information that is prohibited from disclosure by another federal law.
- 4) Trade secrets and other confidential business information.
- 5) Inter-agency or intra-agency communications that are protected by legal privileges.
- 6) Information involving matters of personal privacy (protected under the Privacy Act or containing sensitive personally identifiable information).
- 7) Information compiled for law enforcement purposes, to the extent that the production of those records:
 - a) Could reasonably be expected to interfere with enforcement proceedings.
 - b) Would deprive a person of a right to a fair trial or an impartial adjudication.
 - c) Could reasonably be expected to constitute an unwarranted invasion of personal privacy.
 - d) Could reasonably be expected to disclose the identity of a confidential source.
 - e) Would disclose techniques and procedures for law enforcement, investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions.
 - f) Could reasonably be expected to endanger the life or physical safety of any individual.
- 8) Information relating to the supervision of financial institutions.
- 9) Geological information on wells.

EPA utilizes FOIAonline to automate core processing and administrative activities. All FOIA requests received at EPA are managed throughout their lifecycle in FOIAonline. All EPA records provided in response to a FOIA request are entered into FOIAonline for public viewing and searching unless the volume of paper records is very large and conversion to electronic format is not practical or the response is subject to special handling requirements or policies {e.g., contains Confidential Business Information (CBI) that is only appropriate to release to the requester/owner of the CBI and is not appropriate for public release}. Exceptions are reviewed on a case by case basis by the Agency FOIA Officer. A copy of the exception decision is maintained in the system. If records provided in response to a request are not entered

STANDARD OPERATING PROCEDURE OFFICE OF ENVIRONMENTAL INFORMATION

into FOIAonline because of these conditions, a placeholder document is uploaded with contact information for obtaining a copy of the response.

The scope includes work performed by OEI employees, grantees, contractors, and interns in support of FOIA administration activities assigned to OEI.

For more information on FOIA, see epa.gov/foia. For more information on FOIAonline, including training, see <https://foiaonline.regulations.gov/foia/action/public/home>

As required, OEI developed organizational FOIA procedures within 180 days of finalization of the Agency document "Procedures for Responding to Freedom of Information Act Requests." OEI FOIA procedures are consistent with EPA FOIA regulations and statutory requirements.

TIME LIMITS

The time period in the FOIA statute for an agency to respond to a FOIA request is ordinarily 20 working days from the day a FOIA request is received and logged in by the appropriate Headquarters FOIA Office.

AUDIENCE

The audience includes all OEI officials and employees as well as contractors or grantees and others operating on behalf of OEI.

AUTHORITY

[Freedom of Information Act](#) , 5 U.S.C. § 552.

[EPA's FOIA Regulations](#), Title 40, C.F.R. Part 2, Subpart A.

[CIO Policy 2157.0, Freedom of Information Act \(FOIA\) Policy](#)

[CIO Procedure 2157-P-01.1, Procedures for Responding to Freedom of Information Act](#)

III. ROLES AND RESPONSIBILITIES

OEI Action Office –The OEI organizational unit that has responsibility for responding to the request which must maintain the majority of records responsive to a FOIA and make them readily available for responding to future requests.

OEI Primary FOIA Coordinator –primary liaison to the National FOIA program. The OEI Primary FOIA Coordinator tracks all FOIA requests to OEI, provides technical support to OEI Offices, subject matter experts (SMEs) and reports FOIA response status to OEI managers.

OEI FOIA Coordinators –designated liaisons to the OEI Primary FOIA Coordinator within an OEI Action Office. The OEI FOIA Coordinators stay informed on requests and assignments; route requests within an OEI Action Office; track FOIA request response timeliness; monitor response quality; and provide guidance to program personnel including overdue reports, in collaboration with the OEI Primary FOIA Coordinator.

OEI Search Point Of Contact (SPOC) – serves as an authorized eDiscovery SharePoint user and submits requests for MS Outlook email searches on behalf of their Program or Region. A SPOC accesses the eDiscovery Microsoft SharePoint site, completes the online submission form for search requests, ensures

STANDARD OPERATING PROCEDURE OFFICE OF ENVIRONMENTAL INFORMATION

the search results PST file is reviewed and picked up, and if needed, provides the file to the responsible subject matter expert.

Subject Matter Experts (SMEs) – identify and locate records requested under FOIA. If permitted under the applicable delegation and after obtaining any necessary concurrences, SMEs may respond to FOIA requests directly or provide the responsive records to the FOIA Coordinator who facilitates the response for the Agency.

IV. PROCEDURES:

The actions identified in the following steps are performed by OEI (as the lead Office) and the Program Office staff (which are assigned as “Action Office,” responsible for response and closure) after OEI is assigned responsibility for a FOIA by the Agency:

OEI Procedures for Responding to Freedom of Information Act Requests			
Step	Responsible	Action	Responsibilities
1	OEI Primary FOIA Coordinator	Validate incoming request	<p>The OEI Primary FOIA Coordinator accepts assignments from the Headquarters FOIA Office on behalf the OEI-IO, making OEI the “Action Office.” The OEI Primary FOIA coordinator validates if appropriate action from OEI or EPA is needed based on the nine exemptions governing FOIA responses as well as the following criteria (from page 4 of the CIO Procedure 2157-P-01.1, Procedures for Responding to Freedom of Information Act).</p> <ul style="list-style-type: none"> • Improper FOIA requests include: <ul style="list-style-type: none"> ○ Requests that do not reasonably describe the records sought; ○ Requests that pose questions, rather than seek documents. • FOIA does not require EPA to: <ul style="list-style-type: none"> ○ Create new records or future records in response to a request; ○ Re-create records which were properly disposed of; ○ Produce records the Agency retains no control over; ○ Re-provide records which EPA already makes available to the public; or ○ Produce purely personal records.
2	OEI Primary FOIA Coordinator	Assign requests	<p>The OEI Primary FOIA Coordinator consults with OEI-IO and the OEI-OPM Deputy Director to determine which OEI Office is responsible, accesses FOIAonline and assigns either OTOP, OIAA, OIC, OPM, or Quality Staff, as the lead office (i.e., “OEI Action Office”) responsible for developing a response. The assignment made to the inbox associated with the new Action Office, allows the appropriate OEI FOIA coordinator(s) with FOIAonline access to log in and process the request.</p>
3	OEI Primary FOIA Coordinator	Notification to Action Office	<p>As a follow-up to the FOIAonline system automated notifications, the OEI FOIA Coordinator emails the assigned OEI Action Office immediate office staff and any known SMEs not in the immediate staff informing them of (1) details of FOIA request (2) due date of the request (3) offering assistance in the closeout process, as well as specific instructions for requests needing a Microsoft Outlook email search.</p>
4	OEI Action Office	Determine search parameters	<p>Subject matter determination - The OEI Action Office determines the subject matter of the records the requester is seeking. The OEI Action Office can contact the requester to obtain clarification or additional information.</p>

STANDARD OPERATING PROCEDURE OFFICE OF ENVIRONMENTAL INFORMATION

OEI Procedures for Responding to Freedom of Information Act Requests			
Step	Responsible	Action	Responsibilities
			<p>Cut-off date determination - The OEI Action Office determines the cut-off date for records subject to the request. Under the EPA’s regulations (40 C.F.R. § 2.103 (a)) for determining what records are within the scope of the request, the OEI Action Office includes only those records in its possession as of the date the request was received by the Headquarters FOIA Office, unless the request specifically seeks a more limited scope. If a different date is used, the OEI Action Office informs the requester of that date.</p> <p>Stop the clock determination - The OEI Action Office determines if “stop the clock” action must be taken on the request (in FOIAonline), which is permitted once within 20 days after receipt to seek information and clarification from the requester. Once the clock has been stopped, it is not restarted until the information or clarification is provided. All communications must be documented for the official record and entered into FOIAonline by the FOIA coordinator of the assigned OEI Action Office, and the deadlines adjusted in the system, as appropriate.</p>
5	OEI Action Office	Determine if additional responsive records are in other Agency organizations	<p>The OEI Action Office determines if additional responsive records are located in other Agency organizations.</p> <p>The OEI Action Office determines if the request is incorrectly assigned. The OEI Action Office returns misdirected requests to the local FOIA Office for re-assignment within two working days using FOIAonline.</p> <p>The OEI Action Office assigns each Contributing Office (additional Programs and/or Regions that may have responsive records) a task in FOIAonline for them to provide responsive records. The Contributing Offices coordinate the Agency response with the Action Office, including uploading responsive records to the system.</p>
6	OEI Action Office	Determine response time	<p>The OEI Action Office determines if an extension is needed for responses that cannot be completed within the 20 working days requirement. The OEI Action office may extend the due date of the FOIA request if “unusual circumstances” exist.</p> <p>An “unusual circumstance” exists when there is:</p> <ul style="list-style-type: none"> • a need to search for and collect the requested records from field facilities or other establishments separate from the office processing the request; • a need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; and • a need for consultation, which will be conducted with all practicable speed, with another agency, or among two or more components of the EPA having a substantial interest in the determination of the request. <p>If unusual circumstances exist and there is a need to extend the due date for 10 working days or less, the OEI Action Office notifies the requester in writing, either through email or FOIAonline (by adding comments or an electronic correspondence within the system) stating unusual circumstances exist and</p>

STANDARD OPERATING PROCEDURE OFFICE OF ENVIRONMENTAL INFORMATION

OEI Procedures for Responding to Freedom of Information Act Requests											
Step	Responsible	Action	Responsibilities								
			<p>provides the new due date, within the 20 working day time limit. When the unusual circumstances extend the due date for more than 10 working days, the OEI Action Office provides the requester, within the 20 working days, an opportunity to either (a) modify the request so it may be processed within the 10 working day extension or (b) arrange an alternative time period for processing the original or modified request.</p> <p>If unusual circumstances do not exist, or if the due date was already extended and additional time is needed to complete the response, the OEI Action Office seeks a reasonable extension from the requester. To aid the requester, the OEI Action Office provides the requester the contact information for the EPA FOIA Public Liaison, who will assist in the resolution of any disputes between the requester and the EPA.</p> <p>If the requester does not agree to an extension, the OEI Action Office must fulfill the request as soon as possible. In any event, the OEI Action Office communicates any extensions and expected completion dates to the requester. All communications must be documented for the official record and entered into FOIAonline by the OEI Action Office in coordination with OEI Primary FOIA Coordinator.</p> <p>The OEI Action Office enters any revised due dates and the justification for the extension into FOIAonline. FOIAonline then generates a notice to the Headquarters FOIA Office for approval. The Headquarters FOIA Office will make a decision within two working days, document the decision, with comments if necessary, in FOIAonline, and communicate the new date to the OEI Action Office. The OEI Action Office communicates the new due date to the requestor.</p>								
7	OEI Action Office	Estimate Processing Fees	<p>Unless a waiver of fees has been granted by the Agency FOIA Officer, the OEI Action Office estimates the processing fee which will be charged as specified in 40 C.F.R. § 2.107. Search fees may apply even when no responsive records are identified or no responsive records are disclosed to the requester. The EPA’s FOIA Regulations (40 C.F.R. § 2.107(j)) also define circumstances where it may be appropriate to require advance payment of the estimated fees, if the fees are expected to exceed \$250.</p> <p>The EPA’s FOIA regulations require an assurance of payment from the requester if fees are expected to exceed \$25.00 or an amount specified by the requester.</p> <p>Fees are determined by the type of staff performing the work, the type of requester, and the category of work performed. Fees are calculated as follows:</p> <table><tr><th>Type of Staff</th><th>Charge Per Quarter Hour</th></tr><tr><td>Clerical Staff</td><td>\$4.00 per ¼ hr</td></tr><tr><td>Professional Staff</td><td>\$7.00 per ¼ hr</td></tr><tr><td>Managerial Staff</td><td>\$10.25 per ¼ hr</td></tr></table>	Type of Staff	Charge Per Quarter Hour	Clerical Staff	\$4.00 per ¼ hr	Professional Staff	\$7.00 per ¼ hr	Managerial Staff	\$10.25 per ¼ hr
Type of Staff	Charge Per Quarter Hour										
Clerical Staff	\$4.00 per ¼ hr										
Professional Staff	\$7.00 per ¼ hr										
Managerial Staff	\$10.25 per ¼ hr										

**STANDARD OPERATING PROCEDURE
OFFICE OF ENVIRONMENTAL INFORMATION**

OEI Procedures for Responding to Freedom of Information Act Requests						
Step	Responsible	Action	Responsibilities			
			Type of Requester	Fee Category to be Charged		
				Search	Review	Duplication
			Commercial	Yes *	Yes	Yes
			Educational	No	No	Yes (100 pages free)*
			Non-commercial Scientific	No	No	Yes (100 pages free)*
			News Media	No	No	Yes (100 pages free)*
			All Others	Yes (First 2 hours free)*	No	Yes (100 pages free)
			*Fees shaded in grey above cannot be charged if the Agency fails to comply with time limits for response.			
8	The OEI Action Office / The Contributing Office (s)	Collect and review records	<p>The OEI Action Office and each Contributing Office identifies, collects and reviews records within the scope of the request. This includes the responsibility for consultation and referral with other federal agencies. Referral is when an agency locates a record that originated with, or is of otherwise primary interest to another agency, it will forward that record to the other agency to process the record and to provide the final determination directly to the requester. Consultation is when an agency locates a record or a record that contains information provided by or of interest to another agency, it will ask for the views of that other agency on the disclosability of the records before any final determination is made. Contributing Offices coordinate with the OEI Action Office.</p> <p>The Action Office and each Contributing Office assures protected information is redacted from records before they are released.</p> <p>The OEI Action Office and Contributing Offices:</p> <ul style="list-style-type: none">• ensure redacted information cannot be read through photocopied records;• remove “hidden” metadata as appropriate (e.g. Microsoft Word document properties); and• annotate records with the applicable FOIA exemption(s) at the location of the redacted information. <p>The OEI Action Office enters a copy of both the original and redacted record in FOIAonline, unless subject to special handling requirements (e.g., large volume) or policies. Exceptions to the storage requirement are approved on a case by case basis by the Agency FOIA Officer.</p> <p>The OEI Action Office uploads a placeholder document with contact information for how to obtain a copy of the response if records provided in response to a request cannot be entered into FOIAonline because of special</p>			

**STANDARD OPERATING PROCEDURE
OFFICE OF ENVIRONMENTAL INFORMATION**

OEI Procedures for Responding to Freedom of Information Act Requests			
Step	Responsible	Action	Responsibilities
			<p>handling requirements or policies, or because the volume of files make it impractical to upload the complete response. The responding office maintains and make the records readily available.</p> <p>Only records that have been:</p> <ol style="list-style-type: none"> 1) marked published, and 2) approved for release <p>are available to the public in FOIAonline.</p>
9	The Search Points of Contact (SPOC)	Use Microsoft Outlook Email Search Tool to collect and review Email records	<p>The OEI Action Office determines if the request is for a record search regarding Microsoft Outlook email. An OEI SPOC assists the OEI Action Office in using the Microsoft Outlook Email Search service to ensure all communications pertaining to the request are properly gathered and considered to respond to the request. This service is only for Microsoft Outlook emails. Searches for older emails found on Lotus notes, or any other email service other than Microsoft Outlook do not have access to the search tool service.</p> <p>The SPOC makes the request through the eDiscovery Team using a SharePoint database for the OEI Action Office. Either the Primary OEI SPOC, or one of the five alternate SPOCs, representing each of the five OEI program offices can make the request.</p> <ul style="list-style-type: none"> • Each SPOC in an assigned Action Office is trained to access the SharePoint site for making eDiscovery search requests. However, the primary OEI SPOC can assist and even start the process for any OEI assigned "Action Office," as needed. • SMEs assist the SPOC in making the formal request to the eDiscovery Team by supplying the information for the search. The SPOC uses their input to populate the request on the eDiscovery SharePoint site to conduct an email search request. • The SPOC submits a search request (including search terms & custodians) for a search of MS Outlook emails by going to the eDiscovery SharePoint site. • The search request form includes a Point of Contact (e.g., SPOC or Alternate SPOC) and alternate contact (e.g., Alternate SPOC or one SME) fields. The Point of Contact field is automatically populated with the name of the person who is submitting the search request (e.g., Primary or Alternate SPOC). • Sharepoint updates the Point of Contact listed on the search request form with the status of the search request from the eDiscovery Team. • Once the search results are generated as PST files, Sharepoint provides an email link with the search results to the Point of Contact and alternate contact listed on the form. • The Point of Contact and alternates then follow the link to retrieve the PST file and save the file to their local computer drive. • The PST files can be shared with appropriate SMEs for review and redaction.
10	OEI Action Office	Determine which records (or portions)	The OEI Action Office reviews and releases responsive, non-exempt records or portions of records.

**STANDARD OPERATING PROCEDURE
OFFICE OF ENVIRONMENTAL INFORMATION**

OEI Procedures for Responding to Freedom of Information Act Requests			
Step	Responsible	Action	Responsibilities
		may be released	<p>All records released or being withheld in total must be reviewed by at least two knowledgeable individuals, including one manager or supervisor to ensure openness, transparency, consistency, and the appropriate application of FOIA exemptions. One of the reviews may be performed by the individual who processes the request.</p> <p>The OEI Action Office may consult with the Agency FOIA Officer, their Office of Regional Counsel (ORC), or Office of General Counsel (OGC) about questions regarding withholding of records under a FOIA exemption. If a discretionary FOIA exemption [Exemptions 2, 5, 7 (excluding 7(c)), 8 and 9] is relevant, Action Offices should only withhold records, or portions of records, when they reasonably foresee that disclosure would harm an interest protected by one of the exemptions or when disclosure is prohibited by law.</p> <p>Responsive records that have been properly reviewed and redacted (if necessary) are subject to one of the following outcomes:</p> <ol style="list-style-type: none"> <u>Release in Full</u>. The record, in its entirety, may be released to the requester. <u>Partial Grant/Partial Denial</u>. Portions of the record will be withheld from the requester if covered by either one or multiple FOIA exemptions. The portions of the record that are not redacted are released to the requester. <u>Withhold in Full</u>. The record, in its entirety, will be withheld from the requester if covered by either one or multiple FOIA exemptions. <u>No Record</u>. If, after a reasonable search likely to uncover all responsive documents, no records are located that are responsive to the request, the requester will be informed in writing. A no records certification form must be completed for no record responses and entered in FOIAonline. Please note: The form is not sent to the requester. <u>Confidential Business Information (CBI)</u>. For records or parts of records that have been claimed as CBI or would be claimed as CBI if the business knew the EPA proposed to disclose the information, the procedures set out in 40 C.F.R. § 2.204 must be followed. <u>Glomar Response</u>. In some instances, the EPA may expressly refuse to confirm or deny the existence of records responsive to a FOIA request; this is called a Glomar response. The response letter informs the requester that the request is denied because "either the records do not exist or they are exempt from mandatory disclosure under the applicable provision of FOIA." The OEI Action Office must obtain approval from OGC or ORC prior to issuing a Glomar response.
11	The OEI Action Office	Prepare Response Letter	<p>The OEI Action Office prepares the response letter using standard language, if suitable, and obtains necessary concurrences. All response letters must include: (1) the FOIA tracking number initially issued with the FOIA request, located in the upper left corner of the request details section and (2) appeal language, as appropriate. FOIA requesters have the right to appeal initial FOIA decisions made by the EPA if:</p> <ul style="list-style-type: none"> No records were found; The response time has exceeded the statutory authority or documented extensions;

STANDARD OPERATING PROCEDURE OFFICE OF ENVIRONMENTAL INFORMATION

OEI Procedures for Responding to Freedom of Information Act Requests			
Step	Responsible	Action	Responsibilities
			<ul style="list-style-type: none"> • The request for expedited processing was denied; • The request for a fee waiver was denied; • The requestor believes some records or portions of records were improperly withheld; • The requestor believes the search was inadequate; or • The requestor believes the fee category in which they were placed is incorrect. <p>In addition, response letters that withhold Agency records, in total or in part, are required to identify the:</p> <ul style="list-style-type: none"> • Records withheld individually or by category of similar documents if voluminous; • Applicable FOIA exemption(s) under which the record is being withheld and a brief statement explaining the reason for the denial; and • Authorizing official by name and title - office director or equivalent, who may re-delegate to the division director or equivalent.
12	The OEI Action Office	Finalize Processing Fees	<p>The OEI Action Office informs the requesters in the response letter if fees for processing the request are not billable (i.e., equal to or less than \$14.00). If the processing fees are billable (i.e., greater than \$14.00), FOIAonline generates the invoice.</p> <p>The Administrative Cost section in FOIAonline must be completed to document billable and unbillable costs in FOIAonline. All offices working on a request will enter their administrative costs in FOIAonline. The EPA is required to document actual fees charged to the public (billable) and the administrative costs (unbillable) incurred by the agency in processing FOIA requests.</p>
13	Office Director (or equivalent) or Division Director (or equivalent)	Obtain approval from an authorized official to release or withhold records	An Authorized Official in the OEI Action Office (which may be redelegated only to persons occupying positions not lower than division director or equivalent) gives approval to release or withhold in response to FOIA requests. (See EPA Freedom of Information Delegation of Authority, Section 1-30, for reference.)
14	The OEI Action Office	Respond to request	<p>The OEI Action Office provides the response letter, responsive records and invoice (when applicable) to the requester through FOIAonline. If an email address is provided, the requester is notified via email that the responsive records are available in FOIAonline. Otherwise, the response package is provided via postal mail.</p> <p>The response letter must include a description of the information withheld either by category and volume, or by a list. In all cases the response letter must also include the standard administrative appeal language.</p>
15	The OEI Action Office	Finalize Actions	The OEI Action Office ensures all supporting documentation is entered in FOIAonline (e.g., records of conversations or notes to the record). The record copy of the FOIA response is maintained in FOIAonline, including all

**STANDARD OPERATING PROCEDURE
OFFICE OF ENVIRONMENTAL INFORMATION**

OEI Procedures for Responding to Freedom of Information Act Requests			
Step	Responsible	Action	Responsibilities
			<p>responsive records. Once published, these records become available for public searching and viewing.</p> <p>The OEI Action Office closes the request in FOIAonline.</p>

V. SCHEDULE:

The procedures outlined include all applicable schedule information.

VI. REVISION DATE

The SOP will be reviewed for possible update and revision three years from the published date

RELATED DOCUMENTS

- <http://www.epa.gov/FOIA/FOIAregs.htm>
- <http://www.justice.gov/oip/amended-FOIA-redlined.pdf>
- <http://intranet.epa.gov/oei/imitpolicy/qic/ciopolicy/2171-p-01.pdf>
- <http://www.archives.gov/about/organization/summary/ogis.html>